IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2271 OF 2007

Commodore Naval Barracks INS Angre. ..Petitioner.

V/s.

The Workmen Employed out of
Non-Public Funds. ..Respondent.

Mr.Rajesh Gehani for petitioner.

Mr.A.S.Peerzada with R.M.Pethe for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 19, 2007.

P.C. :

1. Heard Counsel for the parties.

2. Having regard to the peculiar fact situation of the present case, without considering the issue of jurisdiction of the Industrial Court in respect of the proceeding between the parties pending before that Court on merit, in the present Writ Petition, the order that I propose to pass will meet the ends of justice.

3. In my opinion, no fault can be found with the view taken by the Industrial Court that the question whether the Industrial Tribunal has jurisdiction is already concluded against the Petitioner in the award

passed by the Industrial Tribunal dated 7th October, 1991 in Reference (IT) No.76 of 1986. Indeed, the Petitioner had carried the said matter in appeal by way of Writ Petition in this Court, being Writ Petition No.2107 of 1992. However, the said Writ Petition came to be disposed off for non-prosecution in view of the agreement reached between the parties out of court, which agreement was reduced into writing, placed at Exh.A to the present Petition. Clause-f of the said agreement reads thus:

> "(f) The Writ Petition No.2107 of 1992 filed by the employer challenging the award is to be withdrawn without any prejudice to the legal issues involved as to whether the Naval Organisation is an industry or not which could be raised by the employer, as and when so considered fit by the employer, in any suit/writ/claim filed in any court hereinafter."

Relying on the aforesaid arrangement, the Counsel for the Petitioner submits that it was open to the Petitioner to reagitate the question of jurisdiction of the Industrial Court before the Court of first instance even in the present matter.

4. It is not possible to accept such a wide contention canvassed before this Court. In so far as the Industrial Court is concerned, it will be bound

by its earlier opinion recorded in Reference (IT) No.76 of 1986 decided on 7th October, 1991. The Petitioner, at best, may raise that contention before this Court as and when occasion arises. In other words, if the Petitioner succeeds in the proceeding before the Industrial Court, can be permitted to agitate the issue of jurisdiction of the Industrial Court in the Writ Petition to be filed by the Respondent No.1-questioning the correctness of the conclusion reached by the Industrial Court. On the other hand, if the Petitioner fails before the Industrial Court, is bound to carry the matter to this Court by way of Writ Petition. In which case, it will be open to the Petitioner to agitate the issue that the Petitioner is not an Industry, which contention will be considered on its own merits in accordance with the law by this Court. To facilitate the Petitioner to raise such plea before this Court, the Petitioner is allowed to present all the materials, which were taken into account by the Industrial Tribunal while recording its opinion against the Petitioner in Reference (IT) No.76 of 1986; which material will become the foundation for the Petitioner to agitate the question that it is not an Industry, in the event that issue is required to be taken up in the prospective proceedings between

the parties before this Court.

3. Counsel for the Petitioner also submits in all fairness that the second point raised in the present Petition that the present action cannot proceed as the earlier award between the parties has not been terminated, that question may also be left open, to be agitated by the Petitioner in the same way as the issue of jurisdiction of the Industrial Court as and when occasion arises. I find no difficulty in accepting this request.

4. Accordingly, this Writ Petition is disposed off on the above terms. Ordered accordingly.

(A.M.KHANWILKAR,J)